

REMARKS/ARGUMENTS

With respect to the claims, claims 1 and 11 have been amended to clarify various novel features of the present invention. Claims 7, 8, 9, 10, 14, 15, 16, 17 and 18 remain in the application. Claim 21 was initially designated as dependant claim 3 in the original application and is now presented in independent form. No new matter is added. (See MPEP §2163.06 (“[I]nformation contained in any one of the specification, claims or drawings of the application . . . may be added to any other part of the application without introducing new matter.”))

The Examiner states on page 2, paragraph 3 of the office action:

Claims 1-2 and 6-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Kamarad et al. U.S. Patent 6,695,293. Kamarad et al. shows all of the claimed subject matter of an adjustable fence in the figures 1-3.

It is well established law that an invention is anticipated only if each element of the claimed invention is disclosed in a single prior art reference. Lewmar Marine, Inc. v. Barient, Inc., 827 F.2d 744, 747, 3 USPQ2d 1766, 1767 (Fed. Cir. 1987). “[T]here is no anticipation ‘unless all of the same elements are found in exactly the same situation and united in the same way’.” Perkin-Elmer Corp. v. Computervision Corp., 732 F.2d 888, 221 USPQ 669, 673 (Fed. Cir. 1984), cert. denied, 469 U.S. 857 (1984); see also Ceramic Tilers Supply, Inc. v. Tile Council of America, Inc., 378 F.2d 283, 284, 154 USPQ 130, 131-32 (9th Cir. 1967) (there is no anticipation unless all the same elements are found in exactly the same situation and united in the same way to perform the identical function in a single prior reference).

Applicant respectfully submits that elements in each of Applicant’s claims – particularly as clarified by this Amendment – are not anticipated, taught or fairly suggested by the Kamarad

reference. Among others, the Kamarad reference does not disclose the following elements and combination of elements stated in claims 1 and 11: (1) a “first slot engaging portion” of the present invention’s “bracket member” particularly “including an L-shaped tab disposed inwardly and upwardly away from a lower remainder of said bracket member, said first slot-engaging portion terminating at an upper end of said bracket member;” (2) a “second slot-engaging portion” of the present invention’s “bracket member” particularly “including an inverted L-shaped tab disposed inwardly and downwardly away from an upper remainder of said bracket member, said second slot-engaging portion terminating at a lower end of said bracket member;” and (3) “a slotted member . . . containing a plurality of uniformly-sized and uniformly-shaped non-vertical slots spaced at regular intervals along a length of said slotted member and horizontally disposed through said slotted member[.]”

The foregoing elements function with remaining elements set forth in claims 1 and 11 to form an adjustable fence rail supporting assembly wherein the bracket member detachably connects to said slotted member and clasps, supports and positions a fence rail against the slotted member, without puncturing, damaging or defacing the fence rail, at a user-selected, user-modifiable elevation and at a user-selected, user-modifiable angle. These elements allow for “a firm, stable yet detachable connection between the bracket member **20** and the slotted member **15**” to be formed by: (1) “initial angular insertion of the first slot-engaging portion **20B** into the first slot **30A**” (U.S. Application, No. 10/618,501, p. 8 lines 13-14; *see also* Clifford Decl., ¶7), (2) “subsequent [pivotal] movement of the bracket member **20** while inserted in the first slot **30A**” (U.S. Application, No. 10/618,501, p. 8 lines 14-15; *see also* Clifford Decl., ¶7), and (3)

subsequent horizontal insertion of the second slot engaging portion (20C) “into a second slot 30B among the plurality of slots 30” (See U.S. Application, No. 10/618,501, p. 9 lines 3-4; Clifford Decl., ¶7.)

By contrast to the present invention’s “slotted member . . . containing a plurality of uniformly-sized and uniformly-shaped *non-vertical* slots spaced at regular intervals along a length of said slotted member and *horizontally* disposed through said slotted member,” the Kamarad patent teaches a “metal post 12” that “includes a plurality of oblique studs 14 ” with “*vertical* pinholes 16.” (U.S. Patent No. 6,695,293, Col. 3 lines 11-14; *see also* U.S. Patent No. 6,695,293, Col. 4, lines 52-53 & Col. 5 lines 40-42 & Col. 6 lines 24- 34 & Figs. 1 & 3.) (Emphasis added.) In contrast to the bracket member (20) of the present invention, the “locking pin 18” of the Kamarad patent is inserted vertically downward through “vertical . . . pinholes 16” to retain a “wire 20” in a “wire gap 24.” (See U.S. Patent No. 6,695,293, Col. 4, lines 20-37; Fig. 3.) In contrast to the present invention, the Kamarad reference does not disclose an assembly allowing a rail installer to first angularly insert a first slot-engaging portion (20B) of a bracket member (20) into a first slot (30A) and then – using the leverage and support provided thereby – to pivotally draw a lower remainder of the bracket member (20) – including the second slot-engaging portion (20C) thereof – toward a second slot (30B) for insertion therein and selectively detachable connection therewith. This leverage and support benefits a fence installer *inter alia* when she contends with significant lateral or angular forces directed against a fence rail being installed like, for example, on the occasion when the installer is installing and positioning a

broad, flat rail having a significant vertical dimension on a wind fence during a stiff windstorm. (See Clifford Decl., ¶7.)

In contrast to the present invention, removal of the “locking pin 18” in the Kamarad reference is accomplished by application of a unidirectional force upward in a vertical direction against the “locking pin 18” as it is removed from the “vertical pinhole 16.” By contrast to the “vertical pinhole 16” and “locking pin 18” of the Kamarad reference, the present invention’s bracket member (20) is not removable from the slotted member (15) by application of only a force upward in vertical direction – whether that force be occasioned by accumulation and expansion of ice beneath a snow fence, an upward nudge of a child’s hand, an upward nudge of an animal’s nose or some other source. (See Clifford Decl., ¶9.)

Moreover, the “metal fence post with quick wire connection” disclosed in Kamarad does not specifically teach an assembly designed to configure a snow fence or a wind fence with that porosity determined during the development of the present invention to be optimum. In particular, Kamarad does not teach an assembly specifically designed to configure (1) a fence having porosity of 35 percent and to alternatively configure an alternative fence having porosity of 50 percent, (2) a fence having a porosity of not less than 45 percent but no more than 50 percent, or (3) a fence having a porosity of not less than 30 percent but no more than 50 percent. Rather, the invention set forth in the Kamarad, as stated in Column 3, lines 35-39 of U.S. Patent No. 6,695,293, involves the arrangement of “wires strands” at a distance “small enough to prevent livestock from crawling through.”

The enclosed Declaration of one of the inventors, Jeffory Neil Clifford, also sets forth differences in the present invention and the cited reference and further establishes the novelty and non-obviousness of the present claims. Neither the Kamarad reference nor any other known adjustable fence rail supporting and positioning assembly teaches the functional combination of features of the present invention.

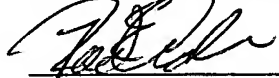
Applicant respectfully submits that claim 1, as amended, includes novel, non-obvious elements and combinations and is therefore patentable. Dependant claims 7, 8, 9, and 10 are therefore also considered to be in patentable condition.

Applicant respectfully submits that claim 11, as amended, includes novel, non-obvious elements and combinations and is therefore patentable. Dependant claims 14, 15, 16, 17 and 18 are therefore also considered to be in a patentable condition.

Claim 21 was initially designated as dependant claim 3 in the original application and is now presented in independent form. The examiner indicated on page 6, item 3, of the Office Action mailed on August 9, 2004 that such claim, if rewritten in such independent form, would be allowed.

Applicant therefore respectfully requests that a timely Notice of Allowance be issued in this case.

RESPECTFULLY SUBMITTED,



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